

# The Indian Child Welfare Act

Rhode Island Department of Children, Youth and Families

**Policy: 700.0170**

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*Version: 1:*

The Indian Child Welfare Act (PL 95-608) is a federal law passed by Congress in 1978 to protect the rights of Indian children, families, and tribes. This federal legislation sets guidelines for the individual states to follow in handling child welfare cases involving Indian children. It is the intent of the Act to serve the best interests of Indian children by strengthening Indian families and preserving the cultural identity of Indian children.

Prior to the enactment of PL 95-608, Indian children were often removed from their families and placed in non-Indian foster or pre-adoptive homes where the Indian culture and heritage were ignored. Congress determined that the failure to enculturate Indian children warranted the passage of this legislation.

In its efforts to adhere to this federal mandate, the Department has developed the following guidelines to assist staff in providing services to Indian children and their families.

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## Identification of Indian Children

### Procedure From Policy 700.0170: The Indian Child Welfare Act

- A. It is important to determine if a child is of Indian descent as soon as possible after he/she enters the child welfare system to ensure that the child's best interests are considered in accordance with the federal mandate.
- B. Initial Complaints to CPS
  - 1. During the preliminary stages of a CPS investigation, if it appears that placement or removal may be necessary, the CPI inquires if there is any Indian heritage in the family. If the CPI is unable to gather this information, the Intake worker attempts to determine the background of the child when he/she receives the case.
  - 2. If there is no Indian heritage, this should be documented by the Intake worker in the case record. If the CPI has determined whether there is Indian heritage, this information is forwarded to Intake with the partial package. The CPI may proceed with emergency placement as needed.
  - 3. If there is Indian heritage, the following information must be included in the case record:
    - a. Indian child's name, date of birth, and birthplace
    - b. Parents' names (including mother's maiden name), or names of Indian custodian(s), dates of birth, and birthplaces
    - c. Indian child's tribal affiliation
  - 4. Information contained in Subsection "3" above must be forwarded immediately to DCYF Legal Counsel. All necessary parties will be notified prior to any court proceedings by DCYF Legal Counsel:
    - a. Legal Counsel will notify the Indian child's parent(s) or Indian custodian and the Tribe of the pendency of the proceedings and of their right of intervention. This notice will be made by registered mail (return receipt requested).
    - b. If parent(s) and/or tribe is unknown, Legal Counsel notifies the Secretary of the Interior's Bureau of Indian Affairs at the following address by registered mail (return receipt requested).

Eastern Area Director  
Bureau of Indian Affairs  
1951 Constitution Avenue N.W.  
Washington, DC 20245
    - c. Legal Counsel will forward a copy of the applicable correspondence in (a) or (b) above to the caseworker. Caseworker will incorporate into the case record.
  - 5. Caseworker must inform family that they are entitled to rights and privileges in accordance with the Indian Child Welfare Act. These rights and privileges are as outlined in this policy.
- C. Active Cases - If there has been no attempt to determine if there is Indian heritage in a case open to DCYF, the primary service worker must follow procedures outlined above (Subsection B).

## Court Involvement

### **Procedure From Policy 700.0170: The Indian Child Welfare Act**

The following procedures must be followed when there is a Family Court Hearing for the foster placement or the termination of parental rights (TPR) of an Indian child. The primary service worker must inform parent(s) of the procedures involved in voluntarily placing or terminating parental rights of the child:

- A. Hearing for Voluntary Placement/TPR:
  - 1. If it has been determined that a child is of Indian descent and the parent(s) desires to voluntarily place the child, customary DCYF procedures are followed with the addition of the following:
    - a. Child must be at least ten (10) days of age. If younger than ten (10) days, consult DCYF Legal Counsel.
    - b. Parent's(s') request must be executed in writing at a Family Court Hearing and certified by the presiding Judge. Consult with DCYF Legal Counsel for protocol.
    - c. All parties to proceeding (i.e. parent(s), tribe, Department) have the right to all reports or other documents filed with the court.
  - 2. If the parent(s) of an Indian child desires to voluntarily terminate parental rights, customary DCYF procedures are followed with the addition of the following:
    - a. Inform DCYF Legal Counsel that child is of Indian descent and discuss the appropriateness of the action. Legal Counsel will prepare the applicable documents for the procedure.
    - b. Parent's(s') request must be executed in writing at a Family Court Hearing. Consult with DCYF Legal Counsel for protocol.
- B. Hearing for Involuntary Placement/TPR - After all notification requirements are completed, a Court Hearing is scheduled. The Court requires the following proof before allowing placement/TPR of an Indian child:
  - 1. Court must be satisfied that placement/TPR is the last resort after all active efforts to maintain the child at home have failed.
  - 2. For involuntary placement, DCYF must prove with clear and convincing evidence, based on the testimony of expert witnesses, that further care by the parent(s) would result in serious emotional or physical damage to the child. The standard of proof for involuntary TPR under the Act is "beyond a reasonable doubt."
- C. Emergency Placement:
  - 1. If an Indian child is at risk of physical harm, he/she may be removed from the home on an emergency basis for his/her protection.
  - 2. As soon as the child is placed, the procedures regarding the placement of an Indian child must be followed.

## Placement of an Indian Child in a Placement Resource or Pre-adoptive Home

### **Procedure From Policy 700.0170: The Indian Child Welfare Act**

- A. Selection of a Placement Resource - The Community Resources Placement Unit staff will attempt to find a placement in the least restrictive environment which meets the special needs of an Indian child. The placement should be located within a reasonable distance of the child's home:
  - 1. The Placement Unit's search for and selection of the placement should be done in conjunction with the tribe's representative in the following order of preference:
    - a. Child's extended family
    - b. Foster home licensed, approved, or specified by the child's tribe (preferably within the tribe)
    - c. Indian foster home licensed by an authorized non-Indian licensing authority
    - d. Licensed group home or institution which has been approved by the tribe.
  - 2. If the tribe chooses a home which is not licensed or certified by the Department, the tribe must submit its selection to the Family Court for approval.
- B. Selection of an Adoptive Home
  - 1. The search for and selection of the home should be done in conjunction with the tribe's representative in the following order of preference:
    - a. Child's extended family
    - b. Non-related member of the child's tribe
    - c. Other Indian family
    - d. Non-Indian family.
  - 2. If the tribe chooses a home which is not approved by an authorized agency, the tribe must submit its selection to the Family Court for approval.
- C. Deviation from preferences outlined in Subsections A and B above can be made only when the Department can show good cause for such deviation. Any determination of what constitutes good cause must be made in conjunction with Legal Counsel. This would include the situation where either parent objects to tribal intervention.